

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, D.C. 20268

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| In the Matter of                          | * |                     |
| SPANISH FORT, ALABAMA 36527               | * | Docket No.: A2021-1 |
| City of Spanish Fort, Alabama Petitioner. | * |                     |

AMENDED PARTICIPANT STATEMENT AND BRIEF IN SUPPORT OF THE PETITION

COMES NOW the City of Spanish Fort, Alabama, an Alabama municipal corporation (sometimes referred to herein as “Petitioner” or “City”), and shows this Honorable Commission the following, to wit:

1. Petitioner is appealing the United States Postal Service’s Final Determination concerning the Spanish Fort, Alabama, Post Office. The Final Determination was dated December 9, 2020.<sup>1</sup>

2. In accordance with applicable law, 39 U.S.C. § 404(d)(5), the Petitioner requests the Postal Regulatory Commission to review the Postal Service’s Final Determination on the basis of the Administrative Record before the Postal Service in the making of the Final Determination. In addition, the Petitioner and other officials have filed documentation in support of this appeal.

3. The Postal Service’s Final Determination should be reversed and remanded for further consideration because the Postal Service has failed to adhere to the applicable laws and

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<sup>1</sup>On December 9, 2020, a notice was issued by the Postal Service that the Spanish Fort Post Office will be closed effective January 1, 2021. On December 10, 2020, a revised notice was issued stating that the Spanish Fort Post Office will be closed effective January 15, 2021. In the Postal Service’s Motion to Dismiss Proceedings, the Postal Service states that a written notice to close was placed in each active Post Office box on December 1, 2020.

regulations governing the discontinuance or closing of Post Offices set forth in 39 U.S.C. § 404(d)

which reads, in part, as follows:

(d)(1) The Postal Service, prior to making a determination under subsection (a)(3) of this section as to the necessity for the closing or consolidation of any post office, shall provide adequate notice of its intention to close or consolidate such post office at least 60 days prior to the proposed date of such closing or consolidation to persons served by such post office to ensure that such persons will have an opportunity to present their views.

(2) The Postal Service, in making a determination whether or not to close or consolidate a post office—

(A) shall consider—

- (i) the effect of such closing or consolidation on the community served by such post office;
- (ii) the effect of such closing or consolidation on employees of the Postal Service employed at such office;
- (iii) whether such closing or consolidation is consistent with the policy of the Government, as stated in section 101(b) of this title, that the Postal Service shall provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining;
- (iv) the economic savings to the Postal Service resulting from such closing or consolidation; and
- (v) such other factors as the Postal Service determines are necessary; and

(B) may not consider compliance with any provision of the Occupational Safety and Health Act of 1970 ( 29 U.S.C. 651 et seq.).

(3) Any determination of the Postal Service to close or consolidate a post office shall be in writing and shall include the findings of the Postal Service with respect to the considerations required to be made under paragraph (2) of this subsection. Such determination and findings shall be made available to persons served by such post office.

(4) The Postal Service shall take no action to close or consolidate a post office until 60 days after its written determination is made available to persons served by such post office. 39 U.S.C. § 404(d)(1-4) (Emphasis added.)

On information and belief, the Postal Service (1) did not send the required notice of its intention to close or consolidate the Spanish Fort Post Office at least sixty (60) days prior to the proposed date of the closing to persons served by the Post Office; (2) did not properly consider the factors in making a determination to close the Spanish Fort Post Office as required by 39 U.S.C. § 404(d)(2); (3) did not make a written determination or statement of the Postal Service's findings under 39 U.S.C. § 404(d)(2) available to persons served by the Post Office; and (4) did not delay the action to close the Post Office for the required sixty (60) days in accordance with 39 U.S.C. § 404(d)(4).

4. For all practical and legal purposes, by operation, custom and usage, the Petitioner asserts that the Spanish Fort Post Office is a "Post Office" and is subject to the procedures set forth in 39 U.S.C. § 404(d). Congress expressly stated that the closing of "any post office" shall be subject to the provisions of 39 U.S.C. § 404(d).

5. The Postal Service's Final Determination should be reversed and remanded for further consideration because the Postal Service has failed to adhere to the applicable laws and regulations governing the discontinuance of post offices, in particular the requirements of 39 C.F.R. § 241.3 which Petitioner asserts should apply to "any post office" closing in accordance with 39 U.S.C. § 404(d). As support for this contention, Petitioner shows the following:

(A) To the best of Petitioner's knowledge and belief, the Postal Service did not follow the procedures for discontinuance required by 39 U.S.C. § 404(d) and 39 C.F.R. §241.

(B) To the best of Petitioner's knowledge and belief, the Postal Service did not conduct a feasibility study the discontinuance or consider the factors required in making a determination whether or not to close the Spanish Fort Post Office as required by 39 C.F.R. § 241.3(a)(3) and 39 U.S.C. § 404(d)(2).

(C) In the event that a feasibility study was conducted, the Postal Service did not provide the public with notice of the proposed action so as to enable the persons served by the Spanish Fort Post Office to evaluate the proposal and provide comments. Id. § 241.3(a)(3)(I).

(D) The Postal Service is required to provide both notice and questionnaires to postal customers at the facility under study. Id. § 214.3(a)(4)(iii). To the best of Petitioner's knowledge and belief, no customer of the Spanish Fort Post Office received notice or questionnaires by mail or otherwise as required.

(E) According to the Postal Service, notice of the closing was placed in the Post Office boxes on December 1, 2020. The Final Determination was issued to the customers of the Spanish Fort Post Office, without the benefit of public comments. A notice was issued on December 9, 2020, stating that the Spanish Fort Post Office will be closed effective January 1, 2021. On December 10, 2020, a revised notice was issued stating that the Spanish Fort Post Office will be closed effective January 15, 2021, from Cynthia Brown, United States Postal Services, Retail Manager District Marketing. Copies of said notices of Final Determination are attached hereto and made a part hereof as Exhibits A and B. Said Final Determination did not contain the factual findings required by 39 C.F.R. § 241.3(a)(3)(ii) and 39 U.S.C. § 404(d)(3).

(F) To the best of Petitioner's knowledge and belief, no written proposal was prepared as required by 39 C.F.R. § 241.3(c)(4).

(G) If such a written proposal was prepared, said proposal and invitation for public comment were never made available to the

affected customers, nor were they posted in the facility under study as required by 39 C.F.R. § 241.3(d)(1).

(H) No community meeting was held to provide outreach and gain public input as required by 39 C.F.R. § 241.3(d)(3).

(I) 39 C.F.R. § 241.3(d)(4) requires that all documentation gathered and considered concerning the proposed change must be retained in the record, and such record must be made available for public inspection at the affected Postal Service locations. No record was made available for public inspection.

(J) The Final Determination which was issued by the Postal Service failed to include the notice required by 39 C.F.R. § 241.3(f)(2)(i), in that it did not notify the affected customers of their right to inspect the record.

(K) The Final Determination which was issued by the Postal Service failed to include the notice required by 39 C.F.R. § 241.3(f)(2)(ii), in that it did not notify the affected customers of their right to appeal said Final Determination to the Postal Regulatory Commission.

6. The Postal Service has failed to adequately consider the issues which it is required to consider under 39 C.F.R. § 241.3.

7. The Postal Service has failed to make factual findings and document the same as required by 39 C.F.R. § 241.3.

8. The Postal Service has failed to post any notices at the Spanish Fort Post Office informing affected customers of either the proposal or of the Final Determination.

9. On information and belief, the Postal Service has failed to make available the Administrative Record and required documents for review by the public in accordance with the applicable rules and regulations and the scheduling order issued by the Commission in this matter.

10. The Postal Service has failed to fairly and adequately consider all factors required when making a determination to discontinue the Spanish Fort Post Office. The City of Spanish Fort and the surrounding community will be negatively impacted by the closing of the Spanish Fort Post Office due to increased travel time, diminished access to postal services, cost to businesses as a result of changing addresses and business practices, potential loss of sales taxes and business opportunities, among other issues.

11. United States Senator Richard Shelby and former United States Representative Bradley Byrne and their representatives were in contact with representatives from the Postal Service and were informed that the Spanish Fort Post Office boxes would not be removed from the City of Spanish Fort but would remain in the City of Spanish Fort and would be a part of a solicitation for bids. Upon review of the solicitation of bids, it was determined that the Post Office boxes were omitted from the solicitation of bids, and this was confirmed with representatives from the Postal Service. On information and belief, Senator Shelby, Representative Byrne and/or their representatives were misled by the Postal Service, and as a result, the Mayor and City Council of the City of Spanish Fort and the community have been misled regarding the intentions of the Postal Service related to the Spanish Fort Post Office. Attached as Exhibit C is a letter from Representative Bradley Byrne to the United States Postmaster General Louis DeJoy outlining the communications between Representative Byrne and representatives from the Postal Service and Representative Byrne's belief that he had been misled by the Postal Service. Attached as Exhibit D is a letter from Mayor Michael M. McMillan to United States Postmaster General Louis DeJoy. Included with both of the letters is the solicitation of bids issued by the Postal Service which excludes the Spanish Fort

Post Office boxes. Senator Richard Shelby, Senator Tommy Tuberville and Representative Jerry L. Carl have all submitted letters to the Commission in support of the Petition.<sup>2</sup>

12. The Petitioner asserts that the Postal Service should be required to follow the discontinuance procedures set forth in 39 C.F.R. §241, and the Spanish Fort Post Office should be considered a “sole source” as it is the only post office located in the corporate limits of the City of Spanish Fort. In addition, the Spanish Fort Post Office serves unincorporated and rural areas surrounding the corporate limits of the City of Spanish Fort.

13. Finally, due to the impact of the COVID 19 pandemic, on information and belief, it is our understanding that some post office closures have been halted, and bills have been introduced into Congress which would stop the closing of post offices during the pandemic. If the Spanish Fort Post Office is closed, this would increase demand on the Daphne Post Office at a time social distancing requirements mandate limited customer access and additional precautions.

14. The City of Spanish Fort has a Post Office Box at the Spanish Fort Post Office, and its mailing address is P. O. Box 7226, Spanish Fort, Alabama, 36577. Mayor Michael M. McMillan and Council Members R. Curtis Smith, Clewis Smith, Jr., Mary W. Brabner, Shane Perry and Carl Gustafson have executed a Verification of the facts and matters alleged in the original Participant Statement. In support of this Petition, the Petitioner hereby incorporates by reference as though set forth fully herein all facts, matters and arguments set forth in the (1) Petitioner’s original Participant Statement; (2) Petitioner’s Application for Suspension of the Determination of the Postal

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<sup>2</sup>Letter from Senator Richard Shelby to Robert G. Taub, Chairman, dated January 12, 2021; Letter from Senator Tommy Tuberville to Robert G. Taub, Chairman, dated January 13, 2021; and Letter from Representative Jerry L. Carl to Robert G. Taub, Chairman, dated January 11, 2021.

Service to Close the Spanish Fort Post Office; (3) Petitioner's Motion to Compel and Supplement to Application for Suspension of the Determination of the Postal Service to Close the Spanish Fort Post Office; and (4) Petitioner's Brief in Response to United States Postal Service's Motion to Dismiss Proceedings.

### BRIEF IN SUPPORT OF PETITION

In support of the Petition, the Petitioner shows this Honorable Commission the following, to wit:

#### I. QUESTIONS PRESENTED

A. Whether the Postal Regulatory Commission has jurisdiction to consider the appeal of the Postal Service's closure of the Spanish Fort Post Office?

B. Whether the Postal Regulatory Commission should consider the Spanish Fort Post Office as a "sole source" based on the fact that it is the only Post Office located in the City of Spanish Fort, among other reasons, and exercise jurisdiction in this appeal?

C. Whether the Postal Regulatory Commission should reconsider the "sole source" rule or exception and its application to post offices, like the Spanish Fort Post Office, to ensure that there is at least some regulatory oversight over the closing the only Post Office in a city or community?

#### II. FAILURE OF THE POSTAL SERVICE TO FILE THE ADMINISTRATIVE RECORD

Petitioner respectfully points out that the Postal Service has failed to provide Petitioner and this Commission with the full administrative record in accordance with Order No.



5793 issued by this Commission<sup>3</sup>. 39 U.S.C. § 404(d)(5) states that “[t]he Commission shall review such determination on the basis of the record before the Postal Service in making such determinations.” On January 13, 2021, the Petitioner filed a Motion to Compel and Supplement to Application for Suspension of the Determination of the Postal Service to Close the Spanish Fort Post Office, and, in part, requested that the Postal Regulatory Commission order the Postal Service to file the administrative record in accordance with Order No. 5793. In the absence of such record, Petitioner contends that it is not possible to fully consider the merits of the matter presently before this Commission. The Petitioner asserts that the Postal Service’s Motion to Dismiss should be denied in the absence of an administrative record.

### III. FACTUAL BACKGROUND AND DISCUSSION

The City of Spanish Fort is a municipal corporation located in Baldwin County in the state of Alabama. On November 1, 1961, an Independent Rural Station was established in Spanish Fort as an extension of the Daphne Post Office. This unit has operated as a Community Post Office since January 1, 1980. The Post Office’s address is listed as 6450 U.S. Highway 90, Spanish Fort, AL 36527. This Post Office is located in its own separate independent space and is not located inside an existing business. The Spanish Fort Post Office provides limited retail products and services, similar to those provided by any other Post Office, and offers an open window for service and 927 Post Office Boxes to customers. The Post Office has indoor mail collection and deposit and an outdoor mail receptacle. The sign on the front of the building reads “U. S. Post Office”. Postal Service employees deliver mail to and courier mail from the Post Office on a daily basis. The

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<sup>3</sup>PRC Order No. 5793, Notice and Order Accepting Appeal and Establishing Procedural Schedule, PRC Docket No. A2020-1 (December 29, 2020).

Spanish Fort Post Office looks and operates like a Post Office. The Spanish Fort Post Office is a “post office”. Photographs of the Post Office building and the interior are attached as Exhibit E.

In 2019, the Spanish Fort CPO’s previous supplier retired and terminated its contract with the Postal Service. According to the Postal Service’s Motion to Dismiss, “[g]enerally, when a previously established CPO is terminated, the Postal Service may award a short-term temporary (emergency) contract to a supplier to provide postal services in the community”. On information and belief, the purpose of the temporary contract is to “delay temporarily the closure of the Spanish Fort CPO while the Postal Service attempted to secure a suitable replacement through a bid solicitation process, or, in the alternative, determine its strategy for closing the Spanish Fort CPO”. While we were informed that the Postal Service was planning to keep the post office boxes in Spanish Fort, the Postal Service issued solicitations for bids for a small kiosk to be located in a retail establishment without post office boxes. Based on information provided by elected officials, Petitioner believes that the elected officials and the Petitioner were misled by the Postal Service.<sup>4</sup>

In its Motion to Dismiss, the Postal Service states that “a first solicitation for contractual bids was issued on November 3, 2020 and was closed on November 13, 2020; a second solicitation was issued on November 19, 2020 and was closed on December 5, 2020”. According to the Postal Service, “the Postal Service received a single bid; this bid was submitted each time by the CPO’s current supplier; and its terms-though slightly altering from one solicitation to the

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<sup>4</sup>See Letter from former Representative Bradley Byrne to Postmaster General Louis DeJoy dated November 14, 2020; Letter from Mayor Michael M. McMillan to Postmaster General Louis DeJoy dated November 25, 2020; Letter from Senator Richard Shelby to Robert G. Taub, Chairman, dated January 12, 2021; Letter from Senator Tommy Tuberville to Robert G. Taub, Chairman, dated January 13, 2021; and Letter from Representative Jerry L. Carl to Robert G. Taub, Chairman, dated January 11, 2021.

next-fell outside the parameters of the Postal Service's acceptable compensation model". At this time, the Postal Service has only cited "acceptable compensation" as the reason for rejecting the bids. Multiple factors should be considered before closing "any post office". 39 U.S.C. § 101 (b) reads as follows: "[t]he Postal Service shall provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining. No small post office shall be closed solely for operating at a deficit, it being the specific intent of the Congress that effective postal services be insured to residents of both urban and rural communities". Without the administrative record, the Postal Regulatory Commission has no way to determine the accuracy of the factual statements made by the Postal Service or to determine that the appropriate factors have been considered. On information and belief, the current supplier made varying offers to keep the Post Office open, but the Postal Service's insistence that the Post Office boxes be moved to Daphne affected the financial viability of any offer. On information and belief, the Spanish Fort Post Office has operated at a break-even point, and with a budget of approximately \$170,000.00 per year, the Post Office seems to be very efficient in its operations. On information and belief, the Post Office boxes generate approximately \$100,000.00 to \$130,000.00 per year in revenue. Unlike other Post Offices which have been closed by the Postal Service, the City of Spanish Fort and the surrounding community are not declining in population, and on information and belief, the Spanish Fort Post Office is not losing money. The Petitioner respectfully asserts that, under the present plan, the Postal Service will lose substantial revenue generated by the Spanish Fort Post Office boxes and incur additional expenses for rural carrier services.

The City of Spanish Fort is a growing municipality with approximately 10,000 residents, and the surrounding Spanish Fort community is home to another 10,000 plus residents. The City has experienced approximately 30.8% growth between 2010 and 2018, and it is expected that this level of growth will continue and possibly increase. The Alabama Department of Transportation projects that the City of Spanish Fort will be the largest city in Baldwin County by 2035.

The City of Daphne and the surrounding community is growing as well. While the Postal Service plans to close the Spanish Fort Post Office and move the Spanish Fort post office boxes to the Daphne Post Office, the Daphne Post Office as constructed has limited capacity. With the projected growth on the Eastern Shore in Baldwin County, it is likely that the Daphne Post Office could reach maximum capacity in a few years requiring expansion or a new facility. The capacity of the Daphne Post Office and future demands for postal services in the area needs to be reviewed.

The Daphne Post Office is approximately 4.8 miles from the Spanish Fort Post Office. Depending on traffic conditions related to capacity issues on State and Federal Highways in the area, including Interstate 10, during work and weekend traffic moving to and from the Alabama, Florida and Mississippi gulf coast and traffic accidents that routinely divert traffic through the main thoroughfares in Spanish Fort and Daphne, a round trip for service can take anywhere from thirty minutes to one hour, depending on where you live. Due to the size of the City of Spanish Fort and the location of access roads, some citizens would be required to drive approximately 15 miles to the Daphne Post Office. (Exhibit F, Map of the City of Spanish Fort). Such travel distances and times would be difficult for our growing elderly population as well.

In addition to serving the needs of the Petitioner and the citizens of the City of Spanish Fort and the surrounding community, the Spanish Fort Post Office serves a number of substantial businesses. Each such person and entity would be adversely impacted by the closure of the Spanish Fort Post Office.

#### IV. ARGUMENT

A. The Postal Regulatory Commission does have jurisdiction to consider the appeal of the Postal Service's closure of the Spanish Fort Post Office under 39 U.S.C. § 404(d).

The fundamental questions are (1) whether the Postal Service has adopted regulations which conflict with a federal statute; (2) whether the Postal Service has simply disregarded a portion of a federal statute; or (3) whether, in adopting regulations that distinguish “community post offices” and “contract post offices” from “USPS-operated” postal facilities, the Postal Service has exercised rule making authority in violation of the United States Code or the “nondelegation doctrine,” which limits the ability of the Legislature, or Congress, to assign its legislative rule making authority to a coordinate branch of government.

#### Postal Service Regulations

The United States Code in 39 U.S.C. § 404 provides the following provision titled “specific powers” of the Postal Service:

(a) Subject to the provisions of section 404a, but otherwise without limitation of the generality of its powers, the Postal Service shall have the following specific powers, among others . . . (3) to determine the need for post offices, postal and training facilities and equipment, and to provide such offices, facilities, and equipment as it determines are needed;

. . .

(d)(1) The Postal Service, prior to making a determination under subsection (a)(3) of this section as to the necessity for the closing or consolidation of any post office, shall provide adequate notice of its intention to close or consolidate such post office at least 60 days prior to the proposed date of such closing or consolidation to persons served by such post office to ensure that such persons will have an opportunity to present their views.

39 U.S.C. § 404 (Emphasis added.). The United States Code in 39 U.S.C. § 404(d)(2) sets forth the factors that are to be considered by the Postal Service in making a determination whether or not to close or consolidate “any post office”, and 39 U.S.C. § 404(d)(3) states that “[a]ny determination of the Postal Service to close or consolidate a post office shall be in writing and shall include the findings of the Postal Service with respect to the considerations required to be made under paragraph (2) of this subsection. Such determinations and findings shall be made available to persons served by such post office.” The United States Code in 39 U.S.C. § 404(d)(4) states that the “Postal Service shall take no action to close or consolidate a post office until 60 days after its written determination is made available to persons served by such post office”. On information and belief, the Postal Service did not follow the aforementioned rules and procedures set forth in 39 U.S.C. § 404 in closing the Spanish Fort Post Office.

The Postal Service has adopted regulations governing, “Discontinuance of USPS-operated retail facilities.” *See* 39 C.F.R. § 241.3. In effect, while the requirements of 39 U.S.C. § 404(d) apply to “any post office”, the Postal Service’s discontinuance regulations distinguish “USPS-operated retail facilities” from contractor-operated facilities, excluding facilities which are operated by contractors from the discontinuance procedures established in the regulations.<sup>5</sup> The regulations

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<sup>5</sup>“USPS-operated retail facility” includes any Postal Service employee-operated Post Office, station, or branch, but does not include any station, branch, community Post Office, or other retail facility operated by a contractor.” 39 C.F.R. § 241.3 (underscore supplied).

codified at 39 C.F.R. § 241.3 *do* require 60-days' notice before closing a "USPS-operated retail facility" and attempts to outline discontinuance or closing procedures consistent with 39 U.S.C. 404 for "USPS-operated" post offices only. However, the Postal Service did not give Spanish Fort's Post Office that notice, presumably because it does not meet the Postal Service's definition of a "USPS-operated retail facility. The regulations contained in 39 USC Part 241 do not appear to contain separate provisions relating to the discontinuance of contractor-operated facilities. The regulations effectively exempt "post offices" that are not "USPS-operated" post offices from the requirements set forth in 39 U.S.C. § 404(d). Congress made no such exception. The United States Code in 39 U.S.C. § 404 sets forth general powers of the Postal Service, and 39 U.S.C. § 401(2) states that the Postal Service has the following power: "to adopt, amend, and repeal such rules and regulations, not inconsistent with this title, as may be necessary in the execution of its functions under this title and such other functions as may be assigned to the Postal Service under any provisions of law outside of this title". The Petitioner asserts that the Postal Service has adopted regulations that are "inconsistent with" the powers granted to the Postal Service by, in effect, creating an unauthorized exemption from the term "any post office" as set forth in 39 U.S.C. §404(d).

#### Conflict between Statute and Regulation

The first question is whether the Postal Service's failure to provide 60 days notice before closing the Spanish Fort Post Office violates the notice requirement set forth in 39 U.S.C. § 404(d)(1), that, "the Postal Service, prior to making a determination . . . for the closing or consolidation of any post office, shall provide adequate notice of its intention to close or consolidate such post office at least 60 days prior to the proposed date of such closing." It is well-settled that,

“If a regulation conflicts with a statute, the statute controls.” *Creemeens v. City of Montgomery*, 602 F.3d 1224, 1227 (11th Cir. 2010). It does not appear that the term “post office” is defined by the statute (39 U.S.C. § 404) to distinguish USPS-operated facilities from contractor-operated facilities. As a result, the Petitioner asserts that the Postal Service violated the mandatory notice provisions set forth in 39 U.S.C. § 404(d)(1) prior to closing the Spanish Fort Post Office.

It also appears that, in implementing its regulations, the Postal Service has determined that USPS-operated postal facilities should receive 60-days’ notice, but that Community Post Offices or contractor-operated facilities should not. Stated differently, the Postal Service’s regulations distinguish between these two types of facilities, and the Petitioner asserts that this distinction runs afoul of the “nondelegation doctrine.”

#### The Nondelegation Doctrine

The Petitioner asserts that the Postal Service violated the nondelegation doctrine by implementing regulations that exceed the permissible scope of rulemaking authority which Congress may delegate to a coordinate branch of government. The United States Supreme Court most recently summarized the “nondelegation doctrine in *Gundy v. United States*, 139 S. Ct. 2116 (2019). In short, Congress may not delegate legislative authority to another branch of government unless the Congress provides an “intelligible principle” to which the delegatee is required to conform. The Court stated the doctrine as follows:

Article I of the Constitution provides that “[a]ll legislative Powers herein granted shall be vested in a Congress of the United States.” § 1. Accompanying that assignment of power to Congress is a bar on its further delegation. Congress, this Court explained early on, may not transfer to another branch “powers which are strictly and exclusively legislative.” *Wayman v. Southard*, 23 U.S. (10 Wheat.) 1, 42–43, 6 L.Ed. 253 (1825). But the Constitution does not “deny[ ] to the Congress



the necessary resources of flexibility and practicality [that enable it] to perform its function[s].” *Yakus v. United States*, 321 U.S. 414, 425, 64 S.Ct. 660, 88 L.Ed. 834 (1944) (internal quotation marks omitted). Congress may “obtain[ ] the assistance of its coordinate Branches”—and in particular, may confer substantial discretion on executive agencies to implement and enforce the laws. *Mistretta v. United States*, 488 U.S. 361, 372, 109 S.Ct. 647, 102 L.Ed.2d 714 (1989). “[I]n our increasingly complex society, replete with ever changing and more technical problems,” this Court has understood that “Congress simply cannot do its job absent an ability to delegate power under broad general directives.” *Ibid.* So we have held, time and again, that a statutory delegation is constitutional as long as Congress “lay[s] down by legislative act an intelligible principle to which the person or body authorized to [exercise the delegated authority] is directed to conform.” *Ibid.* (quoting *J. W. Hampton, Jr., & Co. v. United States*, 276 U.S. 394, 409, 48 S.Ct. 348, 72 L.Ed. 624 (1928); brackets in original).

Given that standard, a nondelegation inquiry always begins (and often almost ends) with statutory interpretation. The constitutional question is whether Congress has supplied an intelligible principle to guide the delegatee's use of discretion. So the answer requires construing the challenged statute to figure out what task it delegates and what instructions it provides.

*Gundy*, 140 S. Ct. at 205 (underscore supplied). The parameters of the “intelligible principle” rule have been addressed repeatedly.

In *Mistretta v. United States*, 488 U.S. 361, 372–73 (1989), the Court addressed what constitutes an “intelligible principle,” and concluded, “Accordingly, this Court has deemed it constitutionally sufficient if Congress [1] clearly delineates the general policy, [2] the public agency which is to apply it, and [3] the boundaries of this delegated authority.” The Eleventh Circuit Court of Appeals noted:

Interpreting the nondelegation doctrine, we have held that Congressional legislation which prescribes essential standards and basic legislative policy and delegates to an administrator authority for promulgation of rules and regulations is constitutionally permissible, provided the standards are sufficiently definite and precise to enable Congress, the courts and the public to ascertain whether the Administrator...has conformed to those standards.

*United States v. Brown*, 364 F.3d 1266, 1271 (11th Cir. 2004) (internal quotations omitted).

In considering whether the Postal Service’s “discontinuance regulations” impermissibly surpass the scope of administrative rulemaking authority, it is important to consider the third component of the “intelligible principle” test set forth in *Mistretta*, namely whether “the boundaries of this delegated authority” have been clearly identified. Here, the statute itself vests the Postal Service with authority to close a post office, but mandates that 60 days notice must be given, “prior to making a determination . . . for the closing or consolidation of any post office” and sets forth factors which must be considered and procedural requirements which must be followed. 39 U.S.C. § 404(d)(1). (Emphasis added.) Therefore, the statute which the regulations are supposed to implement contains an express requirement that 60 days notice be given before closing “any post office” as well as additional requirements which must be met before closing a post office. Stated differently, there is a clear “boundar[y] of this delegated authority” within which the regulations must conform. The Postal Service regulations presume to create a distinction between contractor-operated facilities and USPS-operated facilities, but the statute requires notice before closing “any post office.” Because the regulations exceed the scope of their delegated authority, the Petitioner asserts that the regulations as adopted and applied run afoul of the nondelegation doctrine.

Although the Postal Service refers to the Spanish Fort Post Office as a Community Post Office, the Spanish Fort Post Office is operated in a substantially different manner than other Community Post Offices, based upon the descriptions provided by the Postal Service. Rather than being located inside of an existing business, the Spanish Fort Post Office continues to occupy a separate, independent space, which has housed the Spanish Fort Post Office for many decades. Said

building is labeled as a “U. S. Post Office” by a large sign on the front wall. Postal Service employees continue to deliver mail to and collect mail from this Post Office on a daily basis. To the citizens and businesses of Spanish Fort, this Spanish Fort Post Office is a Post Office.

Based on the foregoing and given the ambiguity in the applicable regulations, the manner in which the Spanish Fort Post Office is operated, and the public perception of the Spanish Fort Post Office, the Commission should take jurisdiction of this appeal.

B. The Spanish Fort Post Office should be considered the “sole source” of postal services to the City of Spanish Fort and the surrounding community as it is the only Post Office located in the City.

The Spanish Fort Post Office has served the residents and businesses of Spanish Fort and the surrounding community for sixty (60) years. While the Postal Service may not consider the Spanish Fort Post Office to be a “real” Post Office, to the people who use this Post Office, it is a “real” Post Office and should not be summarily closed without following the appropriate procedures and allowing for public comment. As the Spanish Fort Post Office is the only post office in the City, it should be deemed to be a “sole source” for the purpose of review by the Postal Regulatory Commission.

The Postal Service takes the position that the Spanish Fort Post Office is not a “sole source” provider based on its argument that the Daphne Post Office is approximately 4.8 miles away, and the Montrose and Mobile Post Offices are 7 and 8.9 miles away, respectively. The Montrose Post Office is located further south of the Daphne Post Office in Baldwin County, and the Mobile Post Office is located across Mobile Bay and the Mobile River Delta in Mobile County. The Postal Service also states that customers of the Spanish Fort Post Office can purchase stamps through

usps.com and at multiple nearby businesses in the area. Depending on traffic conditions related to capacity issues on State and Federal Highways in the area, including Interstate 10, during work and weekend traffic moving to and from the Alabama, Florida and Mississippi gulf coast and traffic accidents that routinely divert traffic through the main thoroughfares in Spanish Fort and Daphne, a round trip for service to the Daphne Post Office can take anywhere from thirty minutes to one hour, depending on where you live. There have been discussions for some time regarding Interstate, intersection and highway improvements, including a possible new bridge across the Mobile River and Mobile Bay, to address these traffic issues, but funding has not been available. Due to the size of the City of Spanish Fort and the location of access roads, some citizens would be required to drive approximately 15 miles to the Daphne Post Office. The Montrose and Daphne Post Offices would require greater travel time at greater distances. Such travel distances and times would be difficult for our growing elderly population as well. Spanish Fort is home to a large population of elderly citizens with limited mobility, who increasingly rely on the Spanish Fort Post Office for their mail services. The Spanish Fort Post Office also services some rural areas surrounding the City which will also be negatively impacted by the closing of the Spanish Fort Post Office. In the Postal Service's Response to Petitioner's Motion to Compel, the Postal Service makes a statement that some residents located in the City of Spanish Fort's easternmost corporate limits would be approximately 4.7 miles to the Stapleton Post Office, but the Postal Service does not address the travel times for the western and northernmost corporate limits in the rural and unincorporated areas north of the City that are served by the Spanish Fort Post Office. How far is too far? What is the unambiguous/objective standard?

This determination should be made after the procedures in 39 U.S.C. § 404(d) have been followed and an administrative record prepared.

The City of Spanish Fort has a Post Office Box at the Spanish Fort Post Office, but if this closure is allowed to stand, the City of Spanish Fort's Post Office Box will be in the City of Daphne Post Office. There is great concern that the City of Spanish Fort will lose part of its identity if residents and businesses are required to maintain post office boxes in a different city. Such a change could also affect tax collection and business licenses, as business addresses would now be based on a City of Daphne Post Office Box.

While the Postal Service argues that the citizens of Spanish Fort and the surrounding community can buy stamps from various retail facilities, the Postal Service does not address the loss of the other services at the Spanish Fort Post Office including, but not limited to, the loss of post office boxes. The Postal Service argues that the residents of Spanish Fort can either opt to lease a post office box at the Daphne Post Office or request rural carrier delivery. Such an argument does not adequately take into account the negative effect of removing the post office boxes from the Spanish Fort Post Office including, but not limited to, the increased travel times and distances, the impact on the elderly community in Spanish Fort, diminished access to postal services, costs to businesses as a result of changing address and business practices, potential loss of sales tax and business opportunities, among other issues. The Spanish Fort Post Office offers post office boxes in a secured location that provides a protected environment for businesses and individuals to send and receive mail, without the worry of their mail and important documents being stolen from a roadside mailbox or receptacle. It also allows a secure place for individuals and businesses to receive

mail without giving their home or business location address, which also helps provide additional security measures for those persons and entities. In addition, persons using the Post Office have the opportunity to seek service at a window from knowledgeable individuals who can assist in the provision of needed postal services. The elderly, and others who sometimes have problems utilizing available technology, are aided when seeking postal services by the employees at the Post Office.

United States Senator Richard Shelby and United States Representative Bradley Byrne and their representatives had been in contact with representatives from the Postal Service and were informed that the Spanish Fort Post Office boxes would not be removed from the City of Spanish Fort but would remain in the City of Spanish Fort and would be a part of a solicitation for bids. Upon review of the solicitation of bids, it was determined that the Post Office boxes were omitted from the solicitation of bids, and this was confirmed with representatives from the Postal Service. Petitioner asserts that Senator Shelby, Representative Byrne and/or their representatives have been misled by the Postal Service, and as a result, the Mayor and City Council of the City of Spanish Fort and the community have been misled regarding the intentions of the Postal Service related to the Spanish Fort Post Office. Representative Bradley Byrne sent a letter to the United States Postmaster General Louis DeJoy outlining the communications between Representative Byrne and representatives from the Postal Service and Representative Byrne's belief that he had been misled by the Postal Service. Mayor Michael M. McMillan likewise sent a letter to United States Postmaster General Louis DeJoy. Included with both of the letters is the solicitation of bids issued by the Postal Service which excludes the Spanish Fort Post Office boxes. (Please see Exhibits attached to the Petitioner's Participant Statement, Application for Suspension of the Determination

of the Postal Service to Close the Spanish Fort Post Office, and the Motion to Compel and Supplement to Application for Suspension of the Determination of the Postal Service to Close the Spanish Fort Post Office).

In making its determination in this matter, the Commission should have access to the administrative record. In its Notice and Order Accepting Appeal and Establishing Procedural Schedule, this Commission ordered that “the Postal Service must file the administrative record pertaining to its determination to close the Spanish Fort Post Office by no later than January 7, 2021.” Order at 2. Said Order was not contingent on the Commission determining whether it would exercise jurisdiction over this matter. To date, the Postal Service has failed to file said administrative record or make the same available to Petitioner.

Without access to the administrative record and the facts and findings contained therein, Petitioner is unable to properly appeal this matter. Likewise, the Commission should have the benefit of examining and considering the full record. The United States Code in 39 U.S.C. § 404(d) states that the review by the Commission of the closing of “any post office” shall be made “on the basis of the record before the Postal Service in making such a determination”. Accordingly, the Postal Service having disregarded this Commission’s Order by withholding the record from the Commission and Petitioner, this Commission should deny the Postal Service’s Motion to Dismiss, take jurisdiction of this appeal, and remand the matter to the Postal Service for further consideration.

As a matter of public policy, this Commission should exercise jurisdiction of Petitioner’s appeal. Local Post Offices, like the Spanish Fort Post Office, are vital to every town and city-both large and small. The Spanish Fort Post Office has served its community faithfully for sixty

(60) years. The postal regulations cited herein exist to protect postal customers and provide them with an opportunity to engage with the Postal Service and express their sentiments in situations such as this. The Spanish Fort Post Office was summarily closed with no explanation given to the affected customers, nor were said customers given an opportunity to comment, voice their concerns, or propose alternatives. A closure in such a manner diminishes the trust and confidence which the citizens of Spanish Fort have placed in the Postal Service. Therefore, it is in the interests of public policy for this Commission to take jurisdiction in this instance and consider this appeal.

C. The Postal Regulatory Commission should reconsider the “sole source” rule and its applications to post offices like the Spanish Fort Post Office to ensure that there is at least some regulatory oversight over the closing of the only post office in a city or community.

The Postal Regulatory Commission should reconsider the “sole source” rule and its application under the Knob Fork case and its progeny, as it appears that, more often than not, jurisdiction is denied. According to the plain language of 39 U.S.C. § 404, “any post office” closing should be subject to the applicable requirements and regulatory oversight by the Postal Regulatory Commission. As a practical matter, under the Postal Service’s interpretation and application of the “sole source” rule or exception, virtually no post office would ever be considered a “sole source” if there is a post office within 15 plus miles, if you can buy stamps online or at some retail establishment within 15 plus miles or buy stamps from a rural mail carrier. With such a narrow application of the “sole source” rule, many who have lost their post office would argue that there is no “sole source” rule. At a minimum, the Petitioner requests that the Postal Regulatory Commission review the “sole source” rule or exception and determine that a post office, like the Spanish Fort Post Office, which is the only post office in the corporate limits of a city, is subject to the discontinuance



or closing procedures required under 39 U.S.C. § 404. In accordance with 39 U.S.C. § 404, it is clear that the words “any post office” would include the Spanish Fort Post Office, and therefore, in accordance with Federal law, the Postal Service is required to satisfy the requirements and follow the procedures set forth in 39 U.S.C. § 404. The Postal Service should not be allowed to violate Federal law and avoid regulatory oversight by the Postal Regulatory Commission through the adoption of regulations and rules which limit the definition of “any post office” to only certain post offices. The Petitioner asserts that such regulations and rules are “inconsistent with” the provisions of 39 U.S.C. § 404(d).

D. The Postal Service will not be disadvantaged by the application of 39 U.S.C. § 404 to post offices like the Spanish Fort Post Office.

The United States Postal Service claims that it would be unfairly disadvantaged in contract management, negotiation and implementation related to contract post offices if the requirements for discontinuance and closure set forth 39 U.S.C. § 404 are applied to community post offices or contract postal units. The United States Postal Service is one of the largest entities in the United States of America, and has a multi-billion dollar annual budget. The Postal Service has thousands of employees working at thousands of locations throughout the United States and the world, and the Postal Service has rule making authority regarding the implementation of its operations. The City of Spanish Fort is a municipality in Baldwin County, Alabama, with less than 10,000 residents, and the Spanish Fort Post Office operates on a contract with a contractor in one small building on a budget of approximately \$170,000.00 per year. With all due respect, the Postal Service should not be worried about its bargaining position as “the deck is presently stacked”. This is effectively the same as “Goliath” calling “David” the giant. On information and belief, at the

present time, there is only one post office closing appeal pending. The Petitioner asserts that the Postal Service will not be unfairly burdened by following the applicable closing requirements. The Petitioner respectfully requests that the Postal Regulatory Commission enforce the terms of 39 U.S.C. § 404 and determine that the Spanish Fort Post Office is “any post office” and subject to regulatory oversight by the Postal Regulatory Commission.

The Petitioner asserts that the Spanish Fort Post Office is not just “any post office”, it is our post office. We, as citizens of the United States of America and customers of the Postal Service, deserve better than this.


## V. CONCLUSION

The United States Code in 39 U.S.C. § 404(d)(5) states that the “Commission shall set aside any determination, findings, and conclusions found to be - (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; (B) without observance of procedure required by law; or (C) unsupported by substantial evidence on the record”. The Petitioner asserts that the Postal Service has not acted in accordance with applicable law and has abused its discretion, and the Spanish Fort Post Office was closed without the observance of procedure required by law. In addition, the Postal Service has failed to produce substantial evidence in the administrative record to support its determination to close the Spanish Fort Post Office. The Petitioner asserts that 39 U.S.C. § 404 applies to “any post office”, and therefore the closing of the Spanish Fort Post Office is subject to the requirements and procedures set forth therein. The Postal Service has failed to follow any of the procedural requirements and make the determinations required by 39 U.S.C. § 404. Instead, the Postal Service has passed regulations and policies and handbooks

that create exceptions to the application of 39 U.S.C. § 404 that Petitioner asserts are not allowed and violate Federal law and the scope of the Postal Service's rule making authority. As a result, "any post office" closure is not reviewed in accordance with 39 U.S.C. § 404, just the post offices that the Postal Service operates and wants to allow review. The Petitioner asserts that the Postal Regulatory Commission should reclaim its jurisdictional authority and apply 39 U.S.C. § 404 to "any post office" closing in order to allow for public comment and regulatory oversight for such an important decision. At a minimum, the Petitioner respectfully asserts that the Postal Regulatory Commission should determine that the only post office located in a city or community is a "sole source".

The Petitioner respectfully requests that the Postal Regulatory Commission deny the Postal Service's Motion to Dismiss, issue an order compelling the Postal Service to produce the administrative record in this matter, remand this matter and order that the Postal Service follow applicable laws, rules and regulations. In addition, the Petitioner requests that the Commission order the Postal Service to reopen the Spanish Fort Post Office.

Respectfully submitted this 27<sup>th</sup> day of January, 2021.

  
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